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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/031,599	05/22/2002	Ludovic Petit	Q68159	6533
23373	7590	12/23/2005	EXAMINER	
SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			WILLATT, STEPHANIE L	
			ART UNIT	PAPER NUMBER
			3732	

DATE MAILED: 12/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/031,599

Applicant(s)

PETIT ET AL.

Examiner

Stephanie L. Willatt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The English translation of FR 99/09798 has been scanned and entered into the file. However, please note that this reference does not appear in Applicant's remarks filed December 22, 2004.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 24 and 25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The original disclosure does not give a certain definition to "dead stroke." Furthermore, there is no indication in the original disclosure that during the "initial dead stroke," there is no pressure increase in the dispensing member and no fluid/product expulsion from the dispensing member.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-8 and 10-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lina et al. in view of Brakarz et al. and Schneider, as evidenced by Dobbs et al.

Lina et al. discloses all of the features of the spray pump, including a pump (4). The pump (4) has an initial dead stroke, actuating the pump starting only after the dispensing head has traveled over the dead stroke, as discussed in column 3, line to column 4, line 68. The product is only sprayed once the piston rod (52) has traveled over the dead stroke for each time the piston rod (52) moves from the rest position to the dispensing position during operation of the device (column 4, lines 18-68). The deadstroke is a predetermined distance of travel by the pump that is the distance between the hollows (49) and the ribs (48). The fluid dispensed by Lina et al. oxidizes if it comes into contact with air (column 1, lines 5-22). The pump (4) has a dosing chamber (column 5, lines 46-64).

Lina et al. does not disclose the type of dispensing head used. Brakarz et al. discloses a dispensing head (pressing button 9) with a spray nozzle insert and a spray profile (atomizer insert 10), as shown in Figure 1. It would have been obvious to one

having ordinary skill in the art at the time the invention was made to use the dispensing head of Brakarz et al. on the spray pump of Lina et al., in order to atomize the fluid when it is dispensed.

Lina et al. does not disclose a closure system including a closure element.

Dobbs et al. disclose a spray device with similar spray components to Lina et al. Dobbs et al. disclose a sidewall portion (43) that scrapes a discharge orifice to clean it off between uses. Dobbs et al. evidences a need for pump sprayers to have a feature for scraping off the spray orifice.

In the embodiment of Figures 2-4, 6, and 7, Schneider discloses a pasty fluid dispenser device comprising a fluid reservoir (storage chamber) with a pump (compression chamber 38) mounted to it. A dispensing head (pushbutton member 1) is mounted to the pump (compression chamber 29) to move between a rest position and a dispensing position, and it has a dispensing orifice (116). The device comprises a closure system (tubular guide portion 110) fixed to the reservoir (storage chamber) and it comprises a closure element (masking element 113) suitable for closing off the dispensing orifice (116) from the outside when the dispensing head (pushbutton member 1) is in the rest position. The closure system (tubular guide portion 110) is implemented in the form of a hollow sleeve disposed around the dispensing head. The hollow sleeve has, on one side, the closure element (masking element 113) disposed above the opening, and on another side, a cutout through which the dispensing head (pushbutton member 1) projects so that it can be actuated by the user, as discussed in column 6, lines 44-65. While the dispensing head (pushbutton member 1) is returning

from its dispensing position to its rest position after the dispensing member has been actuated, the closure element (masking element 113) slides snugly over the zone situated around the dispensing orifice (116), so as to remove any trace of fluid at the dispensing orifice (116), as discussed in column 5, lines 23-32. The closure system (tubular guide portion 110) is snap-fastened to the neck of the reservoir, as shown in Figures 6 and 7.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the spray pump of Lina et al. with a closure system including a closure element, as taught by Schneider, in order to scrape off the dispensing orifice between uses, which is a desirable function of spray devices, as evidenced by Dobbs et al.

Response to Arguments

6. Applicant's arguments filed 7 October 2005 have been fully considered but they are not persuasive. In response to applicant's argument that the examiner has combined an excessive number of references, reliance on a large number of references in a rejection does not, without more, weigh against the obviousness of the claimed invention. See *In re Gorman*, 933 F.2d 982, 18 USPQ2d 1885 (Fed. Cir. 1991).

Applicant argues that Lina et al. do not disclose that the pump has an initial dead stroke where the actuation of the pump starts only after the dispensing head has traveled over the dead stroke. However, Lina et al.'s pump must go through a stroke in order to be primed. Dispensing does not begin until after this stroke. Applicant's pump

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structure is identical to Lina et al.'s pump. The disclosure of the Application does not explain or show what physical differences lead to a different performance in Applicant's pump. Also, the disclosure does not define a dead stroke and does not imply that a dead stroke is different from the dead stroke in Lina et al. Lines 54-66 of column 16 of Hargraves et al. (US 6,013,270) and line 65 of column 7 to line 10 of column 8 of Privas (US 5,417,258) support the definition of a "dead stroke" as being the initial stroke that reduces the volume of the pump chamber before fluid is sucked into the fluid chamber. Since there is no fluid in the chamber, no fluid is dispensed during this stroke. The pump of Privas, as shown in Figure 3, is identical to the pump of the Application and the pump of Lina et al. In light of the specification and the normal usage of the term "dead stroke," Lina et al. discloses a pump including an initial dead stroke.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of


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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephanie L. Willatt whose telephone number is (571) 272-4721. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



slw



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